

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10118-GAO

RONALD P. PASSATEMPO, Trustee, on behalf of the Samuel  
Pietropaolo Irrevocable Trust, SAMUEL PIETROPAOLO, Grantor of the  
Samuel Pietropaolo Irrevocable Trust, and PATRICIA D. PIETROPAOLO,  
Beneficiary of the Samuel Pietropaolo Irrevocable Trust,  
Plaintiffs,

v.

FREDERICK V. McMENIMEN III, BARRY G. ARMSTRONG,  
NEW ENGLAND ADVISORY GROUP, LLC, 1717 CAPITAL  
MANAGEMENT COMPANY, NATIONWIDE PROVIDENT  
(f/k/a Provident Mutual Life Insurance Company), and  
NATIONWIDE FINANCIAL SERVICES, INC.,  
Defendants.

MEMORANDUM AND ORDER

October 20, 2005

O'TOOLE, D.J.

The defendants' motion to vacate or amend the judgment (dkt. no. 45) is GRANTED IN PART and DENIED IN PART.

The defendants correctly point out that it was my intention to rule only on the federal securities claim set forth in Count VII of the amended complaint, not any state securities claim. Accordingly, the judgment should be amended to reflect that distinction, as proposed by the defendants, and the motion is granted to that extent.

The defendants' request that the supplemental claims be dismissed rather than remanded is denied. There is no good reason to dismiss the claims without prejudice without reaching their merits. As to their merits, the state claims are more appropriately addressed in the state courts in this

case. The circumstances of the Curley case, where I chose to exercise supplemental jurisdiction, were different. That case had been pending in this Court for about three years at the time, and that consideration weighed strongly in favor of continuing the litigation of the case here. The present case had been pending here for a much shorter time.

The judgment will be amended to substitute for the words “Counts VII and VIII of the first amended complaint” the words “Counts VII (to the extent it does not allege violations of the Massachusetts Securities Act, Mass. Gen. Laws ch. 110A) and VIII of the first amended complaint.”

It is SO ORDERED.

October 20, 2005

DATE

\s\ George A. O’Toole, Jr.

DISTRICT JUDGE